

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Petition of USTelecom for Forbearance Pursuant)	WC Docket No. 18-141
to 47 U.S.C. § 160(c) to Accelerate Investment in)	
Broadband and Next-Generation Networks)	

COMMENTS OF
The MICHIGAN INTERNET AND TELECOMMUNICATIONS ALLIANCE
ON PETITION FOR FORBEARANCE OF USTELECOM

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On May 4, 2018, USTelecom – The Broadband Association (“USTelecom”) filed a Petition for Forbearance pursuant to 47 U.S.C. § 160(c), requesting the Federal Communications Commission (“FCC”) to forbear from enforcement of certain sections of the Telecommunications Act of 1996, 47 U.S.C. § 609 et seq (“FTA”). In a June 1, 2018 Order, the Federal Communications Commission (“FCC” or “Commission”) directed that any Comments be filed by August 6, 2018.

In these Comments, the Michigan Internet and Telecommunications Alliance (“MITA”) focuses upon and opposes USTelecom’s request for forbearance from the mandate that Incumbent Local Exchange Providers (“ILECS” or “incumbents”) offer Unbundled Network Elements (“UNEs”) of their networks to Competitive Local Exchange Carriers (“CLECs”) at Total Service Long-Run Incremental Cost (“TELRIC”). See 47 U.S.C. § 51.505.

Since 2001, MITA and its members have been striving to advance the prosperity of consumers, businesses and communications industry by making technology more accessible, and affordable, MITA’s members meet the real-world needs of today’s consumers and businesses with viable and innovative solutions. These values and experiences have made MITA an

organization sought by policymakers to provide perspective and expertise in telecommunications matters.

I. Background: Unbundled Network Elements

As the Commission is well aware, the FTA was enacted to replace the regulation of local exchange service with a system wherein competition would instead determine the rates and quality of local services that businesses and consumers would receive. However, transitioning to from regulation to competition was difficult because the incumbent providers owned all the long haul transport between the tandem switches, all the tandems switches, all the transport facilities from the tandem switches to the local wire centers, and all the lines from the local wire centers to each individual customer. Collectively, all these facilities were called the Public Switched Telephone Network.

The network was considered to be a public asset because it was not constructed under a free market system, but rather was constructed pursuant to government regulations that prohibited other companies from offering service inside of the incumbents' protected service territories and because the government authorized the incumbents to charge rates that guaranteed the incumbents would receive a reasonable rate of return. Even though the incumbents technically held fee title to the network components, creation of the ubiquitous telephone network was the result of a public-private enterprise and clearly imbued and encumbered with public interest considerations.

In enacting the FTA, Congress was fully aware that it would have been impossible for new entrants to acquire the large amount of capital needed to build a fully redundant network. Also, there was a debate at the time whether building multiple redundant networks would be the most efficient way to proceed and in the public interest. To overcome these obstacles, the FTA

placed several obligations on ILECs to enable competitors to have to access the Public Switched Telephone Network.

One fundamental obligation placed upon the incumbents required them to provide pieces or “unbundled elements” of the network to CLECs at just and reasonable rates. UNEs provide one essential means for CLECs to gain access to the Public Switched Telephone Network and enable CLECS to connect to customers on the network. Section 251(c)(3) prescribes the ILECs’ obligation to provide access to the network:

“(c) **Additional obligations of incumbent local exchange carriers.** In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

* * *

“(3) **Unbundled access.** The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service,”

In its Petition, USTelecom requests that the Commission forbear from requiring ILECs to fulfill their obligation to provide UNEs under of §251(c)(3). As discussed below, such forbearance would cause severe disruption in the telecommunications market and would not be in the public interest.

II. Discussion.

A. The Competitive Telecommunications Market is Still in the Development Stage.

USTelecom argues the unbundling requirement of Section 251(c)(3) was intended to be in place only to promote the “development” of competition. (Petition, pp 5-6) Even if such position were correct, the argument is too vague, overbroad and without standard.

USTelecom quotes a statement by Senator Breaux when the FTA was passed, explaining the need for UNEs on the basis that “it is unlikely that competitors will have a fully redundant network in place when they initially offer local service.” [Emphasis is USTelecom’s]. (Petition, p 5) The same condition continues to exist today in the majority of Michigan’s exchanges. While CLECs have been able to construct last-mile facilities in some of the most densely populated areas, as the Declarations attached to these Comments show, by no means have CLECs been able to build a fully redundant networks in the vast majority of exchanges in the State. As the FCC is well aware, building out the last mile is a difficult and expensive proposition¹.

Obviously, competition has increased since the promulgation of the Telecommunications Act of 1996. However, the market is still far from being fully developed. The attached Declarations of six Michigan-based CLECs demonstrate that telecommunications competition is still in the early stages of development. Michigan-based CLECs are in various stages of replacing their reliance on UNEs with their own facilities. While four of Michigan-based CLECS have been successful in serving 25%, 40%, 65%, and 97% of their customers without UNEs, the corollary is that these highly successful companies still require UNEs to be able to serve 75%, 60%, 34%, and 3% of their customers.

Plus, there are areas in Michigan where competition still has not reached. As the attached Declaration of Mr. Field (Appendix H) demonstrates, even today, competition still has not reached an exchange located 19 miles from Michigan’s State Capitol Building.

Certainly, competition is still in the processing of developing. USTelecom is simply wrong to represent that the development of competition is a *fait accompli*.

¹ It should not be lost in the discussion of UNEs that being facilities-based involves a wide range facilities beyond the copper and fiber pathways on which signals travel. CLECs have also invested heavily in switching and other equipment and in software that enhances the capabilities of the wires, cables and equipment.

B. The fact that ILEC's are losing some customers to CLECs does not support forbearance.

USTelecom cites the FCC's Forbearance 2015 Order, 31 FCC Rcd at 6161, where the Commission found "other" ILEC-specific rules were outdated and cited "broad market trends," which USTelecom asserts shows "that increasing number of consumers were opting for service providers other than ILECS'." The fact the Commission previously granted forbearance of other rules, says nothing about whether the Commission should forbear from enforcing Section 252(c)(3).

Furthermore, when the FTA first authorized competition, the ILECs had 100% of the customers. The goal of the FTA was to enable customers to select a service provider of their choice. The fact that FTA has resulted in some customers moving away from the ILECs demonstrates that the FTA is working. But forbearing from enforcement of the ILECs' UNE obligation would significantly slow continued development of competition and in many cases cause competition to retreat; a significant amount of CLECs' customers would have to return to the ILECs, due to the inability of the CLECS to continue to provide access to the network.

As part of its argument that competition is in full effect, USTelecom cites examples of two services. USTelecom argues 1) that competition in business data services ("BDS") has been dramatic and 2) that transport competition is robust (Petition, pp 11 and 13). But the fact that non-ILECs have, in some locations, been able to leverage the inherent economics of BDS and transport to build redundant facilities without the need for UNEs does not mean that UNEs are no longer needed anywhere, including in densely populated areas. Nor has USTelecom shown that the conditions which have allowed some BDS and transport competition in some areas apply on a widespread basis or are applicable to other services.

C. UNEs remain essential to competition.

In Drrs. Singer's and Cave's paper that is attached to USTelecom's Petition as Exhibit B ("Paper" or "Exhibit B"), they contend in their introductory paragraph that CLECs

"... buy UNEs to lessen their need to build their own networks or in lieu of leasing equivalent services at commercial wholesale rates. Accordingly, we refer to these third parties as "asset-light service providers." (Paper, p 2)

This statement is a canard. Where is the economic analysis to support Drrs. Singer's and Cave's implicit premise that public interest is better served and economic efficiency is enhanced by CLECs being required to construct redundant facilities to each home and business? If existing needs can be fulfilled with existing facilities, resources would be better expended in areas where existing needs are not fulfilled by existing facilities.

Dr. Gary Wolfram has addressed the fallacy in Drrs. Singer's and Cave's argument:

"A second major argument of Appendix B is that an expansion in infrastructure will occur due to elimination of the obligation to provide UNEs because CLECs will no longer be able to use the existing UNE infrastructure. It is argued that the production of the new infrastructure will create jobs will have a multiplied effect on the economy because these new jobs will result in additional income to the workers and this will result in additional demand for other goods and services.

"This analysis seems to suffer from what Frederic Bastiat called the "broken window fallacy" in his 1850 paper "That Which We See and That Which We Do Not See."² Bastiat's point was that when a window is broken we see people working at fixing the window and glass being produced, and in the end a new window. We thus might think that the economy is better off if we broke a window and hired people to fix it. But the unseen part of this is that the resources that were used to replace the existing window could have been used to produce something else, so we would have been better off if the window had not been broken in the first place.

"While not exactly analogous, what is being argued is that if UNEs are to be abandoned by CLECs, resources will have to be used to produce an alternative to UNEs, that is, additional infrastructure. This additional infrastructure will indeed have value, but we will have abandoned infrastructure that also has value, the UNEs. If the net gain to society were positive from moving from UNEs to new infrastructure, then this infrastructure would have been produced without having to do the equivalent of destroying the old infrastructure. CLECs have been laying out their own network to replace UNEs as they gain a large enough customer base to absorb the fixed cost of new

² Frederic Bastiat, *Selected Essays on Political Economy*, (G. Huszar (ed)), Van Nostrand Co: Princeton, 1964, pg 1-50.

networks, such as fiber. But the fact that UNEs are still being used is a market signal that effectively shows the cost in resource use of adding to the infrastructure in certain areas at this moment in time is greater than the gain. If there was a net gain in abandoning UNEs then we would have difficulty explaining why CLECs continue to make use of UNEs as they increase their customer base.” (Appendix A, pp 3-4)

Also, Drrs. Singer and Cave lack understanding of why CLECS utilize UNEs. CLECs use UNEs to gain footholds in markets to which they otherwise would have reasonable access.

Secondly, Drrs. Singer’s and Cave’s use of the term “asset-light service provider” is a not too subtle attempt to cast CLECs in an undeserved negative light. *The ILECs had 100 years to build out a ubiquitous network with protected service territories and guaranteed rates of return.* When the FTA was implemented, as shown above, no one believed that new entrants would be able to immediately build a fully redundant network. Thus, when compared with ILECS, who are by definition 100% facility-based, it is to be expected that non-ILECs would own a lesser percentage of their networks.

Furthermore, Drrs. Singer and Cave speak out of both sides of their mouths. After disparaging non-ILECs for being “asset-lite,” they then spends the rest of their paper arguing that non-ILECS have been so successful in building out their networks, that UNEs are no longer necessary. While some CLECS have been successful in building a portion of their networks and replacing UNEs, the process is still playing out and UNEs remain terribly important.

As the Commission is aware, the very first elemental obstacle that a CLEC faces when it moves into a new area is to acquire customers. There are three ways that a CLECs can access the network and thereby serve customers in a new area: 1) use UNES; 2) use Resale; or 3) build a capital-intensive redundant network, hoping that customers will sign up after the redundant network is built. Obviously, using either of the first two options, made available by the FTA to new entrants to overcome the inherent advantages of the ILECs, is a more prudent course of

action than using the third option. Furthermore, without access to UNEs to ameliorate the overwhelming advantages held by the ILECs, an overwhelming barrier to entry would be created.

As the Declarations of Mssrs. Iannuzzi, Namy, Rose, Schoen, and Irvin attached to these Comments demonstrate, CLECs build out redundant networks when they have accumulated, via the availability of UNEs, a sufficient mass of customer to support the capital investment. See Exhibit B, ¶¶ 3-5; Exhibit C, ¶¶ 4-8; Exhibit D, ¶¶ 2-6; Exhibit D, ¶¶ 3 and 7; and Exhibit E, ¶¶ 3-4. Drs. Singer and Cave have not recognized or taken into account in their Paper that one reason the number of UNEs has been fairly constant over the last ten years is because at least a portion of the older UNEs are being replaced with CLEC-owned facilities with the aggregate number of UNEs being replenished by an influx of new UNEs as CLECs continue to expand into new territories. As the attached Declarations of Mssrs. Iannuzzi, Namy, Rose, Schoen and Irvin attest, each company continues to replace UNEs purchases with their own facilities.

Furthermore, this natural and continual process of UNE use, UNE replacement, purchase of new UNEs, and future replacement is what the FTA intended to achieve and is evidence that the FTA is working. It would be premature if the FCC were to pull the plug on UNEs at this juncture and terminate the most effective means of creating competitive investment in facilities. Rather, the FCC should be encouraging CLECs to continue to move into new areas and to continue to employ the most effective and efficient entry method available, namely UNEs.

(It bears noting that, unlike CLECs, ILECs are reluctant to compete or build in new areas. In Michigan, MITA is not aware of any instance where AT&T has built wireline facilities into Frontier territories to win new customers or any instance where Frontier has built wireline facilities into AT&T territory to win new customers.)

In addition, USTelecom's proposal to eliminate UNEs is discriminatory and anti-competitive. The ILECs will continue to have access to ubiquitous copper facilities and will not be forced, unlike CLECs, to build redundant facilities in order to be able to continue to serve existing customers and reach new customers.

Nor have Drrs. Singer and Cave adequately or properly assessed the deleterious effects upon competition that CLECs and customers at large would suffer by no longer having the ability to offer service to all customers in an ILEC's service territory. Business customers commonly have multiple locations and seek service to all locations from a single provider. While a CLEC may have access to some of a customer's locations without access to UNEs, frequently there are locations that the CLEC can only serve via UNEs or Resale. A buildout to each such location can seldom be economically justified. In contrast, ILECs would have no such limitation because they could continue to use the existing network without the need to build redundant facilities. Without access to UNEs, in a head to head competition between CLEC and ILEC to serve a multi-location customer, the ILEC would have a fundamental advantage.

The reason the FTA introduced UNEs was to ameliorate the inherent advantages that ILECs have. USTelecom admitted this fact when it quoted the D.C. Circuit in *United States Telecom Ass'n v FCC*, 359 F. 3d, 554, 561 (D.C. Cir. 2004) for the proposition that Section 251c3 was designed to:

“[t]o enable new firms to enter the field despite the advantages of the incumbent local exchange carriers [by giving] the Federal Communications Commission broad powers to require ILECs to make ‘network elements’ available to other telecommunications carriers, most importantly the competitive local exchange carriers.” (Petition, pp 6-7)

It cannot be said that ILECs no longer hold the advantage of a ubiquitous network. The only way for CLECs to likewise have ubiquitous access is if UNEs remain available.

D. The Conditions for Forbearance have not been met.

47 U.S. Code § 160 (“Section 160”) allows the Commission, generally speaking, to refrain from enforcing obsolete regulations that are no longer in the public interest. Specifically, Section 160 reads in pertinent part as follows:

“(a) **Regulatory flexibility.** Notwithstanding section 332(c)(1)(A) of this title, the Commission shall forbear from applying any regulation or any provision of this chapter to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that—

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.

“(b) **Competitive effect to be weighed.** In making the determination under subsection (a)(3), the Commission shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.”

USTelecom’s Petition does not meet the requirements of Section 160.

1. Forbearance from the ILECs’ UNE obligation would result in rates that are not just and reasonable.

USTelecom does not spend much time discussing the first criteria for forbearance.

USTelecom’s argument on this point seems to be based on one sentence.

“In particular, mandates that make legacy facilities and service *available at artificially low rates* reduce incentives for competitors to deploy their own broadband facilities, diverting resources that could be put to better use, such as expending the incumbents’ own broadband capabilities.” (Petition, p 23; Emphasis added.)

However, USTelecom has not shown that the rates of the ILECs have been set at artificially low levels. Pursuant to Section 251(c)(3), rates for UNEs must be set at just and reasonable levels. Section 252 (d) authorizes state commissions to set such rates. In Michigan, AT&T's UNE rates were approved by the Michigan Public Service Commission pursuant to Section 251 on September 21, 2004 in Case No. U-13531 and approved just and reasonable UNE rates for Verizon North, Inc, (now Frontier North, Inc) on March 18, 2009. Since these orders were entered, 14 and 9 years ago, respectively, neither AT&T nor Frontier have attempted to update their cost studies and obtain new UNE rates. These orders of the Michigan commission remain in effective. Accordingly, at least for the two main ILECs operating in Michigan, USTelecom cannot lawfully take the position that the ILECs' UNE rates are artificially low.

Furthermore, USTelcom's argument defies common sense. As the Commission is well aware, the cost of telecommunications equipment and fiber, due to a variety of reasons, including competitive forces, has decreased substantially in the last 10 years. Consequently, in all likelihood, if AT&T and Frontier redid their Michigan cost studies today, their UNE rates would lower, not higher.

Furthermore, UNEs loops and UNE transport are copper facilities laid largely prior to the advent of competition, i.e., during regulatory times. Thus, it is almost a virtual certainty that the ILECs' copper plant has been fully depreciated, meaning that the ILECs, under traditional rate-making concepts, would have fully recovered their copper investment and would no longer be entitled to a return on such already-recovered investment.

In comparison, UNEs rates calculated on the basis of the total-service long-run incremental cost ("TELRIC") of the element, are hypothetical, "forward-looking" rates and the use of the ILECs' "embedded costs" may not be taken into consideration. See 47 CFR 51.505

and 47 CFR 51.505(d)(1). Accordingly, the ILECs' UNE rates enable the ILECs to continue to earn revenue on depreciated copper plant that they would not have been able to earn under traditional rate-making. Consequently, as stated above, it defies logic for USTelecom to contend its UNE's rates are artificially low. In truth, for the above reasons, UNEs rates provide ILECs with excessive revenues.

Finally, the attached affidavits of TelNet, Clear Rate, DayStarr, ACD, and 123.Net demonstrate that these Michigan based CLECs would prefer not to use UNEs and have invested heavily to build redundant networks. These companies would not invest tens of millions of dollars on such overbuilds if UNEs were in fact priced "artificially low."

2. Consumers would lose significant protections if the Commission were to forbear from enforcing the ILECs' UNE obligations.

The very essence of USTelecom's forbearance request is that the Commission take away a fundamental consumer protection, namely UNEs. To be protected against excessively high rates, consumers need to have multiple options from which to choose. USTelecom's request, if granted, would erect a barrier, decreasing the number of customers that CLECs would be able to serve and thus decreasing consumers' choices.

Further, today, there are still areas to which competition still has not arrived. See Field Declaration (Appendix H). The availability of UNEs needs to remain in place unimpeded so that competition can eventually reach such areas.

3. Forbearance would be antithetical to the public interest.

Of the three criteria that must be shown in order for the FCC to grant forbearance, the most fundamental question is whether forbearance would be consistent with the public interest. On its face, USTelecom's request itself would seem to answer that question.

USTelecom is requesting that, while ILECs maintain ubiquitous access to all customers on the network, CLECs be forced to build capital-intensive networks or pay prices materially in excess of the total long-run incremental cost of a service to be able to continue to serve their UNE-reliant customers and to expand into new areas to reach new customers.

Despite the pontifications of Drrs. Singer and Cave, the less access that competitive providers have to customers, the less competition will result. Depriving customers of competitive choices is not consistent with the public interest.

The example provided by DayStarr, LLC provides an excellent demonstration why it would not be consistent with the public interest to forbear from enforcing the statutory obligation of ILECs to offer UNE access to the network. In his Declaration (Appendix D), Mr. Collin Rose explains how access to UNEs enabled DayStarr to assemble a sufficient mass of customers to eventually support a fiber build to every resident and business in the City of Owosso, Michigan, rural city with a population of approximately 15,000. DayStarr's project is currently one-third complete. DayStarr currently offers download speeds of 1 Gigabit per second at a cost of \$100 per month, making Owosso a "Gig City." This fiber project, made possible by having initial access to UNEs is attracting businesses to Owosso and raising the value of homes in the city. An overview of DayStarr's fiber project can be seen in the following YouTube video:

<https://www.youtube.com/watch?v=htFLbnOpe-c>

In addition to DayStarr's accomplishments, TeNet Worldwide, Inc (Appendix B); Clear Rate Communications (Appendix C); KEPS Technologies, Inc (Appendix E); 123.Net (Appendix F); and Bullseye Telecom, Inc (Appendix G), have also provided great benefits to their customers due to the availability of UNE access.

The public interest would not be served by wiping out UNEs and the value that UNEs create for the public good.

III. Conclusion

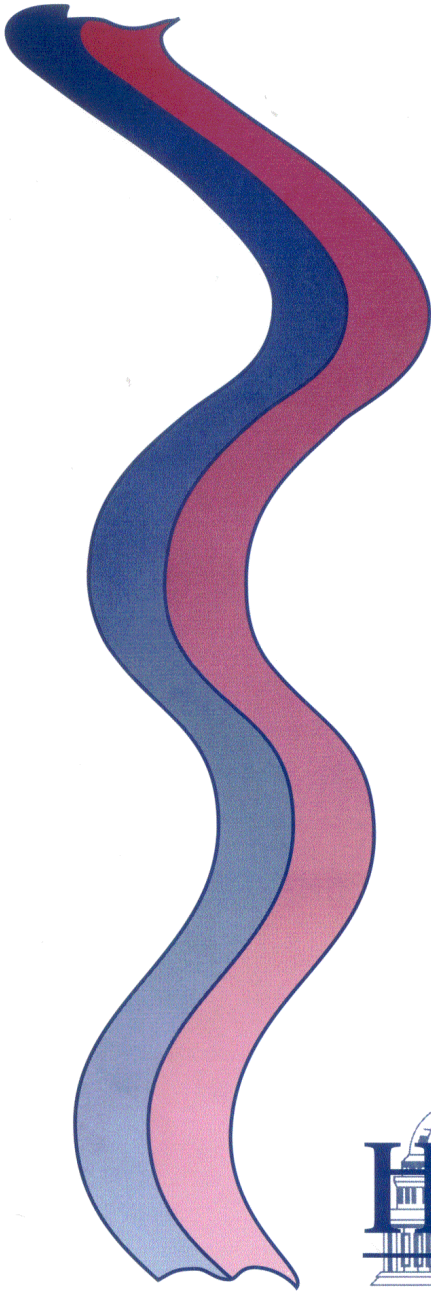
For all the above reasons, the Michigan Internet and Telecommunications Alliance respectfully request that this Honorable Commission deny USTelecom's request to forbear from enforcing the ILECs' obligation under Section 251(c)(3) to offer unbundled network elements to competitive local exchange providers and to grant such other relief as the Commission deems appropriate.

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Appendix A



The Continued Need for Unbundled Network Elements

Gary Wolfram, Ph.D.
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August 5, 2018



Gary Wolfram, Ph.D.
President Hillsdale Policy Group
August 5, 2018

The Continued Need for Unbundled Network Elements

It does not make economic sense to eliminate the obligation of incumbent local exchange carriers (“ILECs”) to provide access to unbundled network elements (“UNEs”); UNEs are essentially a public resource that was developed with the benefit of government regulations. UNEs provide accessibility to customers and access to customers is essential to drive innovation. Perhaps a new company might come up with an innovative way to make use of the existing UNEs that would match or better the speeds of fiber. Certainly, we have already seen innovations in the use of the copper that would never have occurred if the ILECs had been able to block access to the existing infrastructure. It is important that UNEs be accessible to competitors willing to pay the total service long-run incremental cost of the infrastructure in order to make the most efficient use of resources and to stimulate the innovation that is the force behind economic growth.

Appendix B of US Telecom’s Forbearance Petition purports to show an economic gain to the economy as a whole from allowing ILECs to no longer provide UNEs to CLECs. The Appendix argues that if CLECs are forced to abandon the use of UNEs, or if ILECs are able to substantially raise the price to CLECs of UNEs, then consumers will migrate to services that are of higher quality and lower price. These assumptions generate their estimate for consumer surplus from the use of Forbearance.

But why should a customer be forced to make this transition through the elimination of CLEC access to that customer? If customers are going to seek higher quality at lower prices, why aren’t they making this transition today? Eliminating customer choice by reducing customer

access to existing services will indeed cause them to “migrate” to whatever else is available, but if these other services were truly of greater value, then rational consumers would have made the migration already. Exhibit B’s estimate that consumer surplus is improved by either raising the price of existing services or eliminating current options is not tenable.

A second major argument of Appendix B is that an expansion in infrastructure will occur due to elimination of the obligation to provide UNEs because CLECS will no longer be able to use the existing UNE infrastructure. It is argued that the production of the new infrastructure will create jobs will have a multiplied effect on the economy because these new jobs will result in additional income to the workers and this will result in additional demand for other goods and services.

This analysis seems to suffer from what Frederic Bastiat called the “broken window fallacy” in his 1850 paper “That Which We See and That Which We Do Not See.”¹ Bastiat’s point was that when a window is broken we see people working at fixing the window and glass being produced, and in the end a new window. We thus might think that the economy is better off if we broke a window and hired people to fix it. But the unseen part of this is that the resources that were used to replace the existing window could have been used to produce something else, so we would have been better off if the window had not been broken in the first place.

While not exactly analogous, what is being argued is that if UNEs are to be abandoned by CLECs, resources will have to be used to produce an alternative to UNEs, that is, additional infrastructure. This additional infrastructure will indeed have value, but we will have abandoned infrastructure that also has value, the UNEs. If the net gain to society were positive from moving

¹ Frederic Bastiat, *Selected Essays on Political Economy*, (G. Huszar (ed)), Van Nostrand Co: Princeton, 1964, pg 1-50.

from UNEs to new infrastructure, then this infrastructure would have been produced without having to do the equivalent of destroying the old infrastructure. CLECs have been laying out their own network to replace UNEs as they gain a large enough customer base to absorb the fixed cost of new networks, such as fiber. But the fact that UNEs are still being used is a market signal that effectively shows the cost in resource use of adding to the infrastructure in certain areas at this moment in time is greater than the gain. If there was a net gain in abandoning UNEs then we would have difficulty explaining why CLECs continue to make use of UNEs as they increase their customer base.

On page 4 of Appendix B there is an argument that certain UNEs are priced at below wholesale prices. A first point is that if the UNE rates were generally substantially below wholesale rates CLECs would not be constructing so much of their own fiber network. A second point is that the relevant question is whether UNEs are priced below the the total service long-run incremental cost of maintaining the infrastructure that the ILECs were able to build out under the protection of monopolistic regulation. As long as CLECs pay the total service long-run incremental cost of the UNEs then there is an economically efficient use of an existing resource. As an analogy, if the total service long-run incremental cost cost of using a roadway were \$1.00 per mile, then how would it be economically efficient to deny customers access to the road if they are willing to pay the \$1.00 per mile?

As I noted in an earlier paper, the requirement of incumbent local exchange carriers (ILECs) to provide access to their network is based on the historical development of the telecommunications industry as a regulated monopoly.² ILECs obtained their network due to the establishment of their monopoly status and were guaranteed a rate of return in the development

² See *The Anomaly of the Importance of Regulation to Competitive Markets: The Case of Copper and the Telecommunications Industry*, February 2013.

of the network. In order to ensure the continued movement of the industry to a competitive one, it is necessary that competitors have access to customers and to the network.

ILECs have an economic incentive to deny competitors access to the infrastructure, which is abundantly on display with the request for forbearance. Had deregulation of the telecommunications industry that began in 1982 resulted in structural separation, where the Regional Bell Operating Companies (RBOCs) been forced to choose to either provide service or to own the infrastructure this problem could have been avoided. This, unfortunately, was not the case.

The result is that government oversight is necessary to ensure that CLECs have access to the infrastructure that is owned by the formerly regulated monopolies at a rate that reflects the the total service long-run incremental cost of maintaining the infrastructure. As a consequence, ILECs have been required to provide access to UNEs at a regulated rate. This provision has allowed CLECs to enter and develop market share and has resulted in free market benefits of a competitive environment.

While it is true that there has been an influx of new competitors into the industry, a key to innovation, with the resulting increase in service and lower prices, is access to consumers. Judging competition by the number of competitors is not a sound analysis. For example, if there are four competitors producing telecommunications services, the competitors might agree to not attempt to infringe on the customer base of the other competitors. Each could then garner monopoly profits from their local area. There are certainly cases where ILECs do not infringe on the territory of other ILECs.

Accordingly, competition is not wholly defined by the number of firms, but rather whether there are barriers to entry.³ What drives firms to produce at lower cost and to innovate in both manner of production and new product is the threat of entry from new firms and the expansion of existing competitors. Access to customers is vital to innovation. No rational person would expend time and resources to come up with a new telecommunications device if there is no ability to obtain a customer base. The availability of UNEs is an important source of entry and puts pressure on existing companies to innovate and provides incentives for entrepreneurs to enter. While it is true that CLECs are developing some of their own infrastructure, a major reason that such development has been possible is the ability to obtain UNEs as a mechanism to service the market in unique ways

The fact that CLECs continue to use UNEs rather than provide all of their own infrastructure is an indication that UNEs are serving their roles of allowing new competitors to enter the industry by using the existing infrastructure to expand into new areas. At some point, CLECs are able to build up a large enough customer base to support the fixed cost of developing their own fiber network, but this new infrastructure would not exist without the ability of new firms to enter and build a customer base.

The requirement for ILECs to provide UNEs at total service long-run incremental cost has indeed been successful in providing some competition in the telecommunications industry. The fact that the original seven regional bell operating companies have essentially merged into three, and that the four largest wireless carriers control more than 98% of the market,⁴ indicates that there still is room for competition. A continued requirement to provide UNEs at total service long-run incremental cost is an important factor in expanding competition on the

³ See D. Armentano, *AntiTrust: The Case for Repeal*, 2nd edition, (Auburn: Ludwig von Mises Institute, 1999).

⁴ <https://www.statista.com/statistics/199359/market-share-of-wireless-carriers-in-the-us-by-subscriptions/>

telecommunications industry by allowing new and existing CLECs access to a customer base and in providing incentives for innovation.

About the Author: The author is President of Hillsdale Policy Group, Ltd, and the William E. Simon Professor of Economics and Public Policy and the Director of Economics at Hillsdale College. He is the author of *A Capitalist Manifesto: Understanding Market Economy and Defending Liberty*, and has published numerous works on public policy issues. He has served in several policy positions, including Michigan's Deputy State Treasurer, member of the Michigan State Board of Education, President of the Board of Trustees of Lake Superior State University and Congressman Nick Smith's Washington Chief-of-Staff. Dr. Wolfram received his Ph.D. in Economics from the University of California at Berkeley and has also taught at the University of California at Davis, Mount Holyoke College, Washington State University, and the University of Michigan at Dearborn.

CURRICULUM VITAE

Name: Gary Lee Wolfram

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Date of Birth: November 1, 1950

Marital Status: Married, three children

Education: Ph.D. University of California, Berkeley
Economics 1976
B.A. University of California, Santa Barbara
Summa cum Laude Economics 1972

Educational Awards: Phi Beta Kappa, California State Scholar, University of
California Regents Scholar, National Science
Foundation Doctoral Dissertation Grant

Experience: Hillsdale College
William Simon Professor of Economics and Public Policy
1/08 to present
George Munson Professor of Political Economy 1/89 to 1/08
Congressman Nick Smith, 7th District of Michigan
Chief of Staff 5/95-8/96 and Senior
Economist 6/94-7/94
Deputy State Treasurer Taxation and Economic Policy
State of Michigan 1/91- 9/92
Michigan State Senate Republican Policy Staff
Senior Economist 4/83 - 1/89
University of Michigan-Dearborn
Adjunct Professor 9/86-1/89
Assistant Professor 9/77-9/86
Washington State University
Visiting Assistant Professor 9/79-6/80
Mount Holyoke College
Assistant Professor 9/76-9/77
University of California-Davis
Lecturer 1/76-6/76

Academic Chairmanships:

Director of Political Economy Program	Hillsdale College 1992-Present
Director of Economics Program	Hillsdale College 2003-Present
Economics Discipline Chair	UM-D 1980-81 and 1981-82

Professional Activities:

President - Hillsdale Policy Group, a public policy consulting firm 1992-present
Columnist for *The Detroit News Political Blog* 2010-2014
Board of Trustees of Lake Superior State University 1999 to 2008:
 Chairman 2003-4, Secretary-Treasurer 2004-5
Member of Michigan State Board of Education 1993-98
Member of Economic Advisory Council to Committee for a Responsible Federal Budget
Chairman Michigan Alliance for Competitive Energy 2008- 2009
Board of Advisors, American Legislative Exchange Council Tax and Fiscal Policy Task Force 2007 to present
Board of Advisors of Media Research Center's Free Market Project 2003 to present
Editorial Board of *Journal of School Choice* 2008 to present
Board of Hillsdale County Economic Development Corporation 2008 to 2010 and 2012 to 2018
Board of Advisors of Michigan Civics Institute 2000 to 2009
Scholar-in-Residence at Mackinac Center for Public Policy, Summer 1998
Board of Directors of Michigan Council on Economic Education 1998 to present
Member of Founding Committee of Mackinac Center for Public Policy 2014 to present
Board of Scholars of Mackinac Center 1983 to present
Board of Advisors of Adam Ferguson Institute 1996 -2000
National Board of Scholars of Buckeye Institute 1995-2000
Board of Advisors of Michigan School Board Leaders Association 1999- 2005
Member Ensuring Excellent Educators Task Force MI State Board of Education 2002
Chairman - Headlee Amendment Blue Ribbon Committee 1993
Board of Directors Michigan Enterprise Zone Authority 1992-94
Member of Michigan Housing Action Team 1992-93
Board of Directors Michigan State Housing Development Authority 1991-92
Board of Directors Michigan Strategic Fund 1991-92
Michigan Housing Coordinating Council 1991
President - F.D.G. Economics, consultant to Lithuanian government 1989-1991
Michigan Republican Party Issues Committee 1990-91
Committee on Fiscal Affairs National Conference of State Legislatures 1986-88
City of Detroit Property Tax Task Force 1990, member and author of final report
Senior Staff to Michigan School Finance Commission, Michigan Department of Education 1987-88
Senior Staff to Citizens Property Tax Commission of Michigan Senate, 1986-87, author of Commission Report

Publications:

Books:

A Capitalist Manifesto: Understanding the Market Economy and Defending Liberty, Dunlapp and Goddard, 2013

Towards a Free Society: An Introduction to Markets and the Political System, McGraw-Hill, 1993, 3rd edition, 2000.

Journal Articles and Monographs

“The Great Gatsby: A Commentary on the Wealthy in America of the 1920s’” in *Capitalism and Commerce in Imaginative Literature*, Ed Younkins (ed.), Lexington Books, 2016

Introduction and Editor of *Mises, Hayek, and the Austrian Business School*, Hillsdale College Press, Champions of Freedom Series, Volume 46, 2017

Introduction and Editor of *Money: History and Controversies*, Hillsdale College Press, Champions of Freedom Series, Volume 44, 2016

Introduction and Editor of *Energy: Issues and Controversies*, Hillsdale College Press, Champions of Freedom Series, Volume 43, 2015

Introduction and Editor of *Dodd-Frank: A Law Like No Other*, Hillsdale College Press, Champions of Freedom Series, Volume 42, 2014

Introduction and Editor of *The Federal Income Tax: A Centenary Consideration*, Hillsdale College Press, Champions of Freedom Series, Volume 41, 2014

Introduction and Editor of *Adam Smith, Free Markets, and the Modern World*, Hillsdale College Press, Champions of Freedom Series, Volume 40, 2013

An Overview of the Role of Central Banking in Business Cycles and Whether Central Banks Should Exist: An Austrian Perspective, *Georgetown Journal of International Affairs*, Winter/Spring 2013

Introduction and Editor of *The Great Society*, Hillsdale College Press, Champions of Freedom Series, Volume 39, 2012

Introduction and Editor of *The New Deal*, Hillsdale College Press, Champions of Freedom Series, Volume 38, 2011

“Reforming Michigan’s Auto Insurance Industry,” with D. Joseph Olson, Competitive Enterprise Institute, October 2010

“Comments on 'Out of Balance: Comparing Public and Private Sector Compensation Over 20 Years'” Mackinac Center for Public Policy, May 2010

Introduction and Editor of *Cars, Trucks, Markets, and Governments*, Hillsdale College Press, Champions of Freedom Series, Volume 37, 2010

“Commentary on Andrew Coulson's “Comparing Public, Private, and Market Schools: The International Evidence” *Journal of School Choice*, Volume 3 Issue 2, 2009

“Michigan Higher Taxes Driven by Structural Inefficiencies,” *Michigan Forward*, Michigan Chamber of Commerce, March/April 2009

Introduction and Editor of *Free Markets and Politics Today*, Hillsdale College Press, Champions of Freedom Series, Volume 36, 2009

“Effect of Time Spent in Charter Schools on Student Test Scores: A Michigan Case Study,” *Journal of School Choice*, Vol. 2, No. 1., 2008

Introduction and Editor of *America’s Entitlement Society*, Hillsdale College Press, Champions of Freedom Series, Volume 35, 2008

Introduction and Editor of *Great Economists of the Twentieth Century*, Hillsdale College Press, Champions of Freedom Series, Volume 34, 2007

Introduction and Editor of *Entrepreneurship and the Spirit of America*, Hillsdale College Press, Champions of Freedom Series, Volume 33, 2006.

Introduction and Editor of *The Conditions of Free Market Capitalism*, Hillsdale College Press, Champions of Freedom Series, Volume 32, 2005.

“Strengthening Higher Ed: A Taxpayer-Friendly Approach,” *Perspective*, Vol. 12, No. 1, January 2005, Oklahoma Council of Public Affairs.

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“Reporting Labor Statistics Correctly,” in *One Economy, Two Spins*, Media Research Center, Oct 14, 2004

“Economic Realities to Recognize and Accept,” Virginia Institute for Public Policy, Viewpoint, March 2004

“Strengthening Higher Education in Oklahoma,” in *Oklahoma Policy Blueprint*, Brian Dutcher (ed), Oklahoma Council on Public Affairs, 2003

"Taxpayer Rights and the Fiscal Constitution," in *Politics, Taxation and the Rule of Law: The Power to Tax in Constitutional Perspective*, Richard Wagner (ed), Public Interest Institute, 2002

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"Don't Waste Water Treatment Privatization Opportunities," *Michigan Privatization Report*, The Mackinac Center for Public Policy, Winter 2001

"Privatized Dorms: Michigan Can Learn From Texas," with Anne Kirsten, *Michigan Privatization Report*, The Mackinac Center for Public Policy, Fall 2000

"Markets, not MEAP: The Best Way to Measure School Quality," *Michigan Education Report*, The Mackinac Center for Public Policy, Spring 2000

"The Truth About Hillsdale College," *Liberty*, April 2000

"Privatizing the Poor: How to Expand Low-Income Housing in Michigan", *Michigan Privatization Report*, The Mackinac Center for Public Policy, Spring 2000

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"Does Anyone Really Want the State to Set Prices?: The Case of Insurance in Michigan," *Michigan Forward*, Michigan State Chamber of Commerce, March 1990

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Regional Economic Development: Downriver as a Case Study, with Greg Kaza, Mackinac Center Report, June 1989

"Michigan's Experience Taxing the Insurance Industry," *The Fiscal Letter*, National Conference of State Legislatures, September/October 1988

"Taxation of Insurance Companies in Michigan: Court Cases and the Legislative Debate," *Detroit College of Law Review*, Spring 1988

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Teaching Awards:

Hillsdale College Emily Daugherty Award for Teaching Excellence 2011

Professor of the Year Hillsdale College 2004

Distinguished Economics Professor, UM-D Organization of
Economics Students 1981

Nominated: UM-D Distinguished Teaching Award 1979 and 1981

Other Awards:

Lysander Spooner Award from Mackinac Center: 1992

Outside Activity:

Running: best times 4:18 mile, 31:14 10K and 2:26:19 marathon

Named one of top 25 runners of the past 25 years in Michigan by Michigan Runner Magazine (2003)

Appendix B

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of USTelecom for Forbearance)	WC Docket No. 18-141
Pursuant to 47 U.S.C. § 160(c) to Accelerate)	
Investment in Broadband and Next-Generation)	
Networks)	

DECLARATION OF MARK IANNUZZI

1. My name is Mark Iannuzzi. I serve as President of TelNet Worldwide, Inc. (“TelNet”). I, along with my brother, Frank Iannuzzi, founded TelNet in 1998. Our first office was in the basement of my home. At first, TelNet focused on providing wholesale service to Internet service providers (“ISPs”), interexchange carriers that needed facilities-based local products, and content providers (e.g., webhosting and email hosting companies) in the geographic area of Detroit (340) LATA. TelNet’s first customers were Merit Network, ProvideNet, Long Distance of Michigan, and Iserv. Over the years, as TelNet grew, it invested 100% of its earnings back into the company. In 2005, TelNet purchased Superior Spectrum LLC, located in Marquette, Michigan in the Upper Peninsula. By 2008, TelNet operated three data centers in Southfield, Grand Rapids, and Marquette one call center, and 20 colocation sites in Michigan. In 2014, TelNet added a new tier III data center in Southfield Michigan.

2. Today, TelNet also provides retail solutions to over 4,000 small and medium-sized enterprise customers that span several sectors, including energy, healthcare, finance, and retail. TelNet offers voice and messaging solutions including PRI, hosted PBX and unified communications. On the data side, TelNet offers dedicated Internet access, MPLS, and SD-WAN solutions. TelNet also supports other providers with wholesale solutions. Today, TelNet

directly connects its customers via advance software defined networking solutions to all of the major cloud providers, such as AWS, Azure, IBM Cloud, Oracle, Google Cloud, Alibaba, among others. TelNet employs over 150 highly trained individuals and is a valued customer of over 300 suppliers.

3. When TelNet started providing telecommunication services in Michigan in 1998, 100% of its connectivity with customers was dependent upon UNEs. Because UNEs enabled TelNet to acquire a density of customers in distinct geographic areas, TelNet was able to replace UNEs with its own or leased fiber facilities wherever and whenever such density economically permitted TelNet to do so.

4. Over the past 20 years, TelNet has invested tens million dollars in deploying network technology and systems to provide essential communications services. TelNet has built or acquired fiber rings in Detroit, Grand Rapids and Lansing providing direct last-mile and transport connection to our data centers. Our fiber network connects to 10 other competitive access providers that have tens of thousands of fiber route miles in Michigan.

5. Today, TelNet is able to serve approximately forty (40) % of its customers with without any reliance on UNEs. When feasible, TelNet prefers to not rely on UNEs, but rather to convert to its own facilities or competitive access provider facilities when the economics permit it to do so. Where TelNet does not have its own facilities and needs to use UNEs, it purchases UNE loops, transport, and dark fiber transport.


6. If the FCC were to forbear in the requirement that the ILECs provide UNEs, such forbearance would severely impair TelNet's ability to serve a large percentage of its current customers, greatly diminish TelNet's ability to expand into new geographic markets, and severe harmful consequences on TelNet's customers, and on TelNet's ability to provide wireline competition to the ILECs.

7. Wholesale special access services are too expensive for TelNet to consider. For example, TelNet currently pays AT&T approximately \$100 per month for a UNE DS1 (which is comprised of a loop, two cross-connects, 2 channel terminations, and mileage charges based on an average of 18 miles per loop). In comparison, if this same circuit were labeled as a Special Access circuit, rather than a UNE circuit, the monthly charge would be in excess of \$1076.60. The \$1076.60 figure is based on monthly charges of \$285.00 for a local distribution channel, two termination charges of \$106.00 each, and a mileage charge of \$32.20 per mile. Assuming the same average of 18 miles per circuit, the mileage charge alone would be \$579.60. Thus, the price for a Special Access DS1 is at least ten times higher than the price of a UNE DS1. I could not retain my DS1 customers if TelNet's underlying cost for a DS1 increased tenfold.

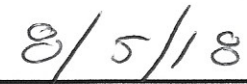
8. The successes that TelNet has accomplished to date would never have been possible without the availability of UNEs. TelNet continues to invest in its networks in Michigan.

9. Furthermore, without access to UNEs, vast areas of Michigan (urban, suburban, and rural) would lose significant competition options that are available for them today. It is essential that UNEs remain available to existing companies and new entrants.

I declare the foregoing to be true and correct to the best of my knowledge, under penalty of perjury.



Mark Iannuzzi



Date

Appendix C

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of USTelecom for Forbearance)	WC Docket No. 18-141
Pursuant to 47 U.S.C. § 160(c) to Accelerate)	
Investment in Broadband and Next-Generation)	
Networks)	

DECLARATION OF THANE NAMY

1. My name is Thane Namy. I serve as the CEO of Clear Rate Communications (“Clear Rate”). I founded the company in 2001. I worked for Global Crossing Communications in various support, technical and sales roles with the company for 5 years in the late 90’s. I started Clear Rate because I was enthralled with telecommunications and inherited an entrepreneurial spirit from my father who owned a supermarket. Our first office was in my home in Royal Oak, Michigan. We sectioned off half of a bedroom. Initially, I and a partner were the only employees. Other than ourselves, we hired our first employee in the summer of 2001.

2. Initially, Clear Rate focused on providing service to consumers and businesses in the geographic area of in the Detroit (340) LATA. Clear Rate’s first customers were consumers and small businesses who wanted clear rates and invoicing. We offered services to McDonald’s restaurants and hotels who preferred our plans and billing. We initially offered flat-rate Toll and Long-Distance service in Metro Detroit, Michigan and Ohio. In the first few years of service, our customers requested local phone service and dedicated T-1 service.

3. In 2005, Clear Rate was the first to bring an unlimited local and long distance POTS service to rural and suburban residential and business customers in Verizon territory at the

time, now Frontier. Verizon under pressure later began offering a competing unlimited service in Michigan. Clear Rate brought ISDN-PRI service to school districts in mid-Michigan where the service was unavailable because of the type of switch used in the area by SBC (now AT&T). Finally, Clear Rate introduced an Unlimited Local and Long Distance ISDN-PRI service using our own switching and IXC connections to save school districts thousands of dollars per year. Many school districts still have this service today.

4. We've invested millions of dollars in switch sites, data centers, collocation and related equipment to provide internet and dial tone over the past several years. Most recently, Clear Rate has begun investing millions of dollars to construct fiber direct to the customer, bypassing the incumbent phone and cable companies. We serve hundreds of school districts and thousands of businesses throughout the country. We initially contracted with companies to construct and build the fiber network and we would then operate the network. Today we have brought this work in-house and have our own fiber construction staff who procure, design, and install the fiber network to reduce the significant cost related to fiber construction.

5. We build fiber in multiple markets in Michigan, including downtown Detroit, Metro Detroit, Ann Arbor, Saginaw and Flint Markets. We do aerial and underground construction, which can be very expensive in urban and suburban areas.

6. In the 17 years that it has been in business, Clear Rate has invested heavily in deploying network facilities and technology to provide essential communications services. Today, Clear Rate provides telecommunications services in 19 states. Clear Rate provides telecommunications to schools, banks, townships, hospitals and every conceivable industry in the Midwest. Clear Rate works with hundreds of US-owned and based suppliers. These financial

relationships are part of Michigan's interrelated and interdependent ecosystem of technology and communications companies.

7. When Clear Rate commenced providing telecommunications service in Michigan in 2001, 100% of its connectivity with customers was dependent upon UNEs. Because UNEs enabled Clear Rate to acquire a density of customers, in distinct areas, Clear Rate was able to replace UNEs with its own facilities wherever and whenever such density economically permitted Clear Rate to do so.

8. Today, Clear Rate is able to serve a significant percentage of its customers with its own fiber service and facilities without any reliance on UNEs. Clear Rate prefers to not rely on UNEs and converts to its own facilities when the economics permit it to do so.

9. If the FCC were to forbear in the requirement that the ILECs provide UNEs, such forbearance would impair Clear Rate's ability to serve a large percentage of its current customers, greatly diminish Clear Rate's ability to expand into new areas, and have several attendant harmful consequences on Clear Rate, on Clear Rate's customers, and on Clear Rate's ability to provide wireline competition to the ILECs.

10. The successes that Clear Rate has accomplished to date would never have been possible without the availability of UNEs.

11. Furthermore, without access to UNEs, vast areas of Michigan (urban, suburban, and rural) would lose significant competition options that are available for them today. It is essential that UNEs remain available to existing companies and new entrants.

I declare the foregoing to be true and correct to the best of my knowledge, under penalty of perjury.

/s/ Thane Namy

Thane Namy

August 6, 2018

Date

Appendix D

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of USTelecom for Forbearance)	WC Docket No. 18-141
Pursuant to 47 U.S.C. § 160(c) to Accelerate)	
Investment in Broadband and Next-Generation)	
Networks)	

DECLARATION OF COLLIN ROSE

1. My name is Collin Rose. I am President of DayStarr, LLC, d/b/a DayStarr Communications (“DayStarr”). DayStarr provides telephone, broadband and other telecommunications services. DayStarr became a CLEC in 2003. DayStarr bought its first telephone switch on eBay for \$10,000. Initially, DayStarr focused on providing DSL service to businesses in Owosso, Michigan, but within a short time started providing local phone service as well. Owosso’s population is approximately 15,000.

2. As time progressed DayStarr developed a density of customers and in 2006 made a decision to commence building out its own facilities. DayStarr’s first construction endeavor was overbuilding downtown Owosso with copper. Within a few years, as the cost of copper increased, DayStarr ceased building with copper and instead started building with fiber in all new areas.

3. In 2014, DayStarr began constructing fiber so that every home in the city could have access to its network. Currently, DayStarr has installed fiber so that it is available to one-third of the Owosso’s residents and expects to have fiber available the all city residents within the next two or three years. Currently, DayStarr offers one (1) GIG service at a price of \$100

per month. The economic development impact of DayStarr's fiber project on the City of Owosso can be viewed in a the following YouTube video:

<https://www.youtube.com/watch?v=htFLbnOpe-c>

4. Over the years, as DayStarr grew, it invested the majority of its earnings back into the company.

5. In the 16 years that it has been in business, DayStarr has invested millions of dollars in deploying network facilities and equipment to provide essential communications services. Today, DayStarr employs 17 highly trained individuals and is in the processing of hiring 3 more employees. DayStarr currently provides telecommunications to nearly 2000 customers in Owosso and surrounding areas. Today, DayStarr works with approximately 200 vendors and suppliers.

6. When DayStarr commenced providing telecommunications service in Michigan in 2003, 100% of its connectivity with customers was dependent upon UNEs. Because UNEs enabled DayStarr to acquire a density of customers, in certain areas, DayStarr was able to replace UNEs with its own facilities wherever and whenever such density economically permitted DayStarr to do so. Today, DayStarr is able to serve approximately 97 % of its customers with its own facilities and without any reliance on UNEs.

7. DayStarr prefers to not rely on UNEs and converts to its own facilities when the economics permit it to do so.

8. The successes that DayStarr has accomplished to date would never have been possible without the availability of UNEs.

9. Furthermore, without access to UNEs, vast areas of Michigan (urban, suburban, and rural) would lose significant competition options that are available for them today. It is essential that UNEs remain available to existing companies and new entrants.

I declare the foregoing to be true and correct to the best of my knowledge, under penalty of perjury.

/s/ Collin Rose

Collin Rose

August 4, 2016

Date

Appendix E

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of USTelecom for Forbearance)	WC Docket No. 18-141
Pursuant to 47 U.S.C. § 160(c) to Accelerate)	
Investment in Broadband and Next-Generation)	
Networks)	

DECLARATION OF KEVIN SCHOEN

1. My name is Kevin Schoen. I am CEO of KEPs Technologies, Inc, d/b/a ACD.net (“ACD”). Along with my brother, Steve Schoen, I, at the age of 15, began building computers and selling them to area residents, businesses, and schools. Our first office was a 500 square foot space in the basement of our parents’ home. Three years later, in 1989, I bought a house in East Lansing to attend Michigan State University and to run the computer business. In 1993, ACD got into the internet business and provided dial up services. In 2000, ACD became a licensed CLEC and purchase a class 5 phone switch, expanded into 12 central offices in the Lansing and Jackson area, and started providing DSL, T1, and local phone services. In 2002, ACD began providing ISDN Prime services to Michigan State University in East Lansing, Michigan and to Merit Networks in Ann Arbor, Michigan. Through these two customers, ACD provided dial-up Internet access to tens of thousands of students and other educational users.

2. Over the years, as it grew, ACD invested the majority of its earnings back into the company. In 2002, ACD co-founded a company that built a 60-mile fiber ring around Lansing, Michigan. In 2006, ACD built a 40,000 square foot data center in Lansing, a facility that also serves as ACD’s headquarters.

3. Today, ACD has an in-house department that designs and builds fiber optic facilities. Thus, using its own employees, ACD is able to convert UNE loops to fiber optic facilities that ACD owns and operates to serve its own customers. Even though ACD is heavily focused on constructing and using its own facilities, at the present time, ACD, out of necessity, serves more than 10,000 of its customers utilizing DSL, T1, and other UNE copper loops.

4. In addition to constructing fiber facilities of its own use, ACD constructs fiber for third parties. Each month, ACD constructs approximately 30 miles of new fiber optic facilities three states: Michigan, Ohio, and Northern Indiana. ACD constructs fiber for various purposes such as cellular companies, businesses, apartments, office and industrial districts, and residential districts.

5. In the 32 years that it has been in business, ACD has invested approximately tens and tens of million dollars in deploying network facilities and technology to provide essential communications services. Today, ACD employs over 120 highly trained individuals. ACD provides telecommunications services to over sixty (60) hubs throughout Michigan. ACD works with over 80 suppliers.

6. The DS0 copper loop is especially critical for ACD, as it allows us to deploy our own electronics to obtain high-speed broadband services using ADSL2+, VDSL2, and other proprietary DSL technologies. The existing ILEC- provided electronics do not have the same innovations that ACD has.

7. When ACD commenced providing telecommunications service in Michigan in 2000, 100% of its connectivity with customers was dependent upon UNEs. Because UNEs enabled ACD to acquire a density of customers, in certain areas, ACD was able to replace UNEs with its own fiber optic facilities wherever and whenever such density economically permitted

ACD to do so. Today, ACD is able to serve approximately 25% of its customers with its own fiber optic network without any reliance on UNEs.

8. ACD prefers to not rely on UNEs, but rather to convert to its own facilities when the economics permit it to do so. ACD is continuing to build extensive metropolitan, suburban, and rural fiber networks that cover entire geographic areas. ACD has built out 2500 miles of fiber backbone and transport and 1500 miles of last-mile fiber facilities.

9. If the FCC were to forbear in the requirement that the ILECs provide UNEs, such forbearance would severely impair ACD's ability to serve a large percentage of its current customers, greatly diminish ACD's ability to expand into new areas, and have several attendant harmful consequences on ACD, on ACD's customers, and on ACD's ability to provide wireline competition to the ILECs.

10. The successes that ACD has accomplished to date would never have been possible without the availability of UNEs.

11. Furthermore, without access to UNEs, vast areas of Michigan (urban, suburban, and rural) would lose significant competition options that are available for them today. It is essential that UNEs remain available to existing companies and new entrants.

I declare the foregoing to be true and correct to the best of my knowledge, under penalty of perjury.

/s/ Kevin Schoen

Kevin Schoen

August 5, 2018

Date

Appendix F

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of USTelecom for Forbearance)	WC Docket No. 18-141
Pursuant to 47 U.S.C. § 160(c) to Accelerate)	
Investment in Broadband and Next-Generation)	
Networks)	

DECLARATION OF DANIEL JOSEPH IRVIN

1. My name is Daniel Joseph Irvin. I serve as CEO of 123.Net, Inc. a telecommunication company incorporated in the State of Michigan ("123.Net"). I founded what became 123.Net in 1995. Initially, we had a handful of employees. A few years later we became a Competitive Local Exchange Carrier through acquiring a company called Local Exchange Carriers of Michigan (LECMI). In 2001 we moved our business headquarters to Southfield by leasing and ultimately purchasing data center space.

2. Today, we are a company of over 170 highly trained employees with our own fiber construction teams in both metro Detroit and Grand Rapids, Michigan. 123.Net has over 3,500 route miles of fiber and continues to build over 200 route miles per year. Moreover, 123.Net has over 55 fixed wireless Point of Presence sites.

3. In the 23 years that 123.Net has been in business, it has invested tens of millions of dollars in deploying network facilities and technology to provide essential communications services and continues to invest more each year. Today, 123.Net works with numerous suppliers. These financial relationships are part of Michigan's interrelated and interdependent ecosystem of technology and communications companies.


4. When 123.Net first commenced providing telecommunications service in Michigan, 100% of its connectivity with customers was dependent upon UNEs. Because UNEs enabled 123.Net to acquire a density of customers, in certain areas, 123.Net was able to replace UNEs with its own facilities wherever and whenever such density economically permitted 123.Net to do so.

5. If the FCC were to forbear in the requirement that the ILECs provide UNEs, such forbearance would impair 123.Net's ability to serve a large percentage of its current customers, greatly diminish 123.Net's ability to expand into new areas, and have several attendant harmful consequences on 123.Net, on 123.Net's customers, and on 123.Net's ability to provide wireline competition to the ILECs.

6. The successes that 123.Net has accomplished to date would never have been possible without the availability of UNEs.

7. Furthermore, without access to UNEs, vast areas of Michigan (urban, suburban, and rural) would lose significant competition options that are available for them today. It is essential that UNEs remain available to existing companies and new entrants.

I declare the foregoing to be true and correct to the best of my knowledge, under penalty of perjury.



Daniel Joseph Irvin



Date

Appendix G

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of USTelecom for Forbearance Pursuant to)	WC Docket No. 18-141
47 U.S.C. § 160(c) to Accelerate Investment in)	
Broadband and Next-Generation Networks)	
)	

DECLARATION OF WILLIAM H. OBERLIN

- 1) My name is William H. Oberlin. I am CEO of BullsEye Telecom, Inc (“BullsEye”).
- 2) I, along with Peter LaRose, Tom Tisko, Mark Wayne and Scott Loney, in late 1998 founded the Company. I was retired and making investments in various telecom businesses when we founded the company. Our first office was in a small office space of less than 500 square feet in Southfield, Michigan. Initially, in 1999, we had 5 to 10 employees. At the beginning, BullsEye focused on providing service to small to medium sized businesses in the Detroit metropolitan area and lower Michigan. BullsEye’s first customers were the law firm of Nettleman, Romzek and Wolk and other business customers.
- 3) BullsEye began as a high speed data services company. In 2001, BullsEye began offering POTS services, followed by VoIP services in 2005. Today BullsEye offers customers a comprehensive product portfolio centered on POTS, Broadband, VoIP, SD-WAN and other technology and cloud services.
- 4) The company’s niche focus is national multi-location customers. The company has now evolved into a \$100+ million revenue company that services over 45,000 locations nationally, providing service in all 50 states.

- 5) BullsEye has made major investments in back office and front office systems, including billing, ordering, provisioning and bonding to service provider systems. BullsEye has also invested in the creation of customer portal services, software and tools that enable customers to order and change services, provide order status and service performance including business analytics/reporting. Additionally, the company has made major investments in VoIP, business infrastructure and network technology platforms and solutions.
- 6) In the 19 years that BullsEye has been in business, it has invested approximately \$30 to \$40 million dollars in deploying network facilities and technology to provide essential communications services. Today, BullsEye employs over 200 highly trained individuals.
- 7) Today, BullsEye works with over 50 suppliers. These financial relationships are part of a national interrelated and interdependent ecosystem of technology and communications companies.
- 8) When BullsEye commenced providing telecommunications service nationally in 2001, a significant portion of its connectivity with customers was dependent upon UNEs and Resale arrangements. Today, BullsEye relies exclusively on UNEs and Resale to access its customers.
- 9) If the FCC were to forbear in the requirement that the ILECs provide UNEs and Resale, such forbearance would impair BullsEye's ability to serve a large percentage of its current customers, greatly diminish BullsEye's ability to expand into new areas, and have several attendant harmful consequences on BullsEye, on BullsEye's customers, and on BullsEye's ability to provide wireline competition to the ILECs.
- 10) The successes that BullsEye has accomplished to date would never have been possible without the availability of UNEs and Resale.

11) Furthermore, without access to UNEs, vast areas of Michigan (urban, suburban, and rural), as well as other national markets, would lose whatever competition options exist for them today. For wireline competition to exist in these areas, it is essential that UNEs and Resale remain available to existing companies and new entrants.

I declare the foregoing to be true and correct to the best of my knowledge, under penalty of perjury.

William H. Oberlin signed on behalf
William H. Oberlin by David Bailey
V.P. Corporate
Development

8/3/18

Date

Appendix H

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of USTelecom for Forbearance)	WC Docket No. 18-141
Pursuant to 47 U.S.C. § 160(c) to Accelerate)	
Investment in Broadband and Next-Generation)	
Networks)	

DECLARATION OF GARY L FIELD

1. My name is name is Gary L. Field. I am an attorney and the principal of Field Law Group, PLLC. I have represented CLECs for approximately 18 years in regulatory matters, primarily before the Michigan Public Service Commission, and in other legal matters, including litigation.
2. I reside in Williamston, Michigan, 18.9 miles from the State Capitol Building in Lansing. I frequently work from my home.
3. For years, I have been trying to replace the service provided by the incumbent at my residences without avail due to the lack of competitors offering service in the Williamston exchange. While a small cable company provides competitive service to a portion of the Williamston exchange, it does not provide service south of the expressway, were I reside.
4. I purchase DSL service from the incumbent provider. I have frequently tested its speed. The incumbent's DSL service operates at download speed of approximately 1.5 Mbps, even though I pay for a DSL service that guarantees download speeds "up to 6 Mbps."
5. There are no other reasonably priced "broadband" services available in the section of the Williamston exchange in which I live.

6. In my opinion, competition has not yet reached the Williamston exchange, which is located approximately 19 miles from Michigan's State Capitol building.

I declare the foregoing to be true and correct to the best of my knowledge, under penalty of perjury.

/s/ Gary L. Field
Gary L. Field

Date: August 6, 2018